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266 NLRB No. 201

D--9883
Quincy and Coldwater, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ACORN BUILDING COMPONENTS, INC.

and

Case 7--CA--21690

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW

DECISION AND ORDER

Upon a charge filed on 27 January 1983 by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, herein called the Union, and duly served on Acorn Building Components, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on 16 February 1983 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 11 January 1983 following a Board election in Case 7--RC--16645, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about 24 January 1983, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 10 March 1983 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and raising an ''affirmative defense.''

On 25 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 11 April 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations

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[1] Official notice is taken of the record in the representation proceeding, Case 7--RC--16645, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits the request and its refusal to bargain with the Union, but asserts that the Union was certified improperly. Respondent reiterates its contention in the underlying representation proceeding that the Hearing Officer acted wrongly and contrary to law by overruling Respondent's objections to the election.

Review of the record herein reveals that in Case 7--RC--16645 the petition was filed on 22 February 1982. On 1 April 1982 a Stipulation for Certification Upon Consent Election was approved by the Regional Director, and the election was conducted on 22 April 1982. At the conclusion of the balloting, the tally revealed that 270 votes were cast for, and 192 against, the Union.[2] On 29 April 1982 Respondent timely filed objections to the election, alleging in substance that: (1) the Union, on or about 12 April 1982, improperly promised to waive its initiation fee for ''charter members''; and (2) the Union, on or about 29 March 1982, suggested to employees that the National Labor Relations Board favored the Union in the election.

Following an investigation, the Regional Director ordered that a hearing be held concerning Respondent's objections. On 14

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[2] There was one challenged ballot, an insufficient number to affect the results.

and 15 June 1982 a hearing was held before a duly appointed hearing officer. Following the hearing, on 21 July 1982 Hearing Officer Jerome E. Schmidt issued his Report and Recommendations on Objections in which he found that Respondent's objections did not warrant setting aside the election, and recommended that the Board overrule the objections in their entirety. Thereafter, Respondent filed timely exceptions to the Hearing Officer's report in which it reiterated the arguments previously made to the Hearing Officer. On 11 January 1983 the Board issued a Decision and Certification of Representative [3] in which it adopted the Hearing Officer's findings and recommendations, and certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit.

Following a request by the Union on or about 19 January 1983 that Respondent engage in collective-bargaining negotiations with the Union, Respondent, on or about 24 January 1983, refused to recognize and bargain in good faith with the Union as the exclusive bargaining representative of its employees in the certified unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

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[3] Not published in bound volumes of Board Decisions.

[4] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a Michigan corporation engaged in the manufacture, sale, and distribution of aluminum doors, windows, and related products with its principal office in Detroit, Michigan, and production facilities in Quincy and Coldwater, Michigan. In the course of its business operations within the State of Michigan, Respondent annually manufactures, sells, and distributes products valued in excess of $500,000, of which products valued in excess of $50,000 are shipped directly to points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,

and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by the Employer at its plants located at 87 Taylor Street, Quincy, Michigan; 42 Cole Street, Quincy, Michigan; and 696 Race Street, Coldwater, Michigan; but excluding all office clerical employees, technical employees, professional employees, guards, truck drivers and supervisors as defined in the Act.

2. The certification

On 22 April 1982 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 7, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 11 January 1983, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 19 January 1983, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 24 January 1983 and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 24 January 1983 and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist

therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Acorn Building Components, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by the Employer at its plants located at 87

Taylor Street, Quincy, Michigan; 42 Cole Street, Quincy, Michigan; and 696 Race Street, Coldwater, Michigan; but excluding all office clerical employees, technical employees, professional employees, guards, truck drivers and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 11 January 1983 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 24 January 1983 and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Acorn Building Components, Inc., Quincy and Coldwater, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by the Employer at its plants located at 87 Taylor Street, Quincy, Michigan; 42 Cole Street, Quincy, Michigan; and 696 Race Street, Coldwater, Michigan; but excluding all office clerical employees, technical employees, professional employees, guards, truck drivers and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and,

if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Quincy, Michigan, and Coldwater, Michigan, production facilities copies of the attached notice marked ''Appendix.'' [5] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 1 August 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time production and maintenance employees, including shipping and receiving employees, employed by the Employer at its plants located at 87 Taylor Street, Quincy, Michigan; 42 Cole Street, Quincy, Michigan; and 696 Race Street, Coldwater, Michigan; but excluding all office clerical employees, technical employees, professional employees, guards, truck drivers and supervisors as defined in the Act.

ACORN BUILDING COMPONENTS, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, Room 300, 477 Michigan Avenue, Detroit, Michigan 48226, Telephone 313--226--3244.